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C O N F I D E N T I A L MANILA 001841

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STATE FOR EAP, EAP/MTS, L/EAP  
DOD FOR ISA/AP GENERAL ALLEN  
PACOM ALSO FOR FPA AND GENERAL GOODMAN

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TAGS: PREL MARR RP

SUBJECT: HANDLING THE MARINE "RAPE" CASE -- NEXT STEPS

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

¶1. (SBU) With the imminent arraignment (likely on April 28) of four Marines accused in a case of rape of a Filipina in Subic Bay on November 1, 2005, this case and the utility of the Visiting Forces Agreement (VFA) will re-emerge in the spotlight after a relatively quiet four months. An outstanding motion from the complainant's lawyer regarding the Constitutionality of the VFA, as well as April 21 instructions from the Department of Justice to the prosecutors to seek reduction of the charges against three of the Marines may temporarily delay this arraignment, but likely not for long.

¶2. (C) Once the trial begins, defense lawyers expect that the court will conduct approximately two hearings per week. Our JUSMAG and RSO will coordinate all arrangements for ensuring the safety of the accused when present at the court as required, while PAS will handle media exposure. An ACS representative will monitor the trial and respond to inquiries from family members, as needed.

¶3. (C) Through our repeated public statements and in our private conversations with senior GRP officials and members of the Philippine Congress, we have continued to steer a steady course that protects the rights of the four Marines and furthers our long-term interests in the Philippines in general and in our mil/mil relationship in particular. These include:

- maintaining focus on the shared US/Philippine legal principle of "innocent until proven guilty;"
- holding firm to the principle enshrined in the VFA of the primacy of US custody, despite repeated calls by the GRP, the Philippine Congress, and the public for transfer to Philippine custody;
- ensuring proper respect for the privacy of the accused, subject to the advice of their counsels about access by outsiders;
- demonstrating respect for the primary role of the defense counsels of the four Marines (each with his own set of lawyers) in developing the legal defense strategy;
- expressing our shared determination to ensure a fair and impartial trial under Philippine jurisdiction, with Philippine prosecutors, lawyers, and judges;
- reiterating the value of the VFA to the national interests of both countries;
- convincing members of the Philippine Congress to abandon, at least for the duration of the trial, any effort to abrogate the VFA; and,
- deferring Philippine calls for renegotiation of provisions of the VFA, notably on custody and on the "one

year rule."

14. (C) Embassy will continue to work vigorously to uphold these objectives, and would like to express our appreciation for the continuing support and advice from the Department, in particular EAP and L/EAP, as well as from III MEF and PACOM, as we navigate the difficult legal, political, and public relations waters surrounding this matter. We will continue to monitor developments closely and to maintain the regular Embassy working group meetings.

15. (C) We remain determined to ensure that this first test of the VFA is a success story that results in a fair trial with a just outcome and at the same time that demonstrates the continuing viability and relevance of the VFA as an effective mechanism for our ongoing military exchanges and exercises, which are already making headway here in the war on terror.

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Kenney